IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KENNETH JACKSON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case No. 15 C 11140**
	)	
EXPERIAN INFORMATION SOLUTIONS, INC., et al.,	)	
	)	
Defendants.	)	

ORDER ON DEFENDANT EXPERIAN'S MOTION FOR SANCTIONS

This is a suit under the Fair Credit Reporting Act and the Fair Debt Collection Practices Act by Kenneth Jackson against, among others, Experian Information Solutions, Inc., a credit reporting agency. Mr. Jackson had a mortgage loan on which he defaulted. He filed a Chapter 13 bankruptcy petition and listed the debt. Experian received notice of the bankruptcy petition. Mr. Jackson obtained a discharge of all of his debts in December 2013, and Experian received notice of this as well. Mr. Jackson later obtained a copy of his Experian credit report, which he alleged listed the loan as in default and with a high balance despite the discharge. He sent a dispute letter to Experian, which updated the report. Mr. Jackson alleges in his complaint that the revised version was still inaccurate. Mr. Jackson sued Experian and others. His only claim against Experian was a claim under the FCRA. Discovery has been completed. Currently before the Court is Experian's motion for sanctions under Federal Rule of Civil Procedure 11 against Mr. Jackson and his attorneys, Sulaiman Law Group. Experian seeks dismissal of the suit and an award of attorney's fees.

Discussion

1. Mr. Jackson's complaint, which he filed on December 10, 2015, included the following allegations regarding Jackson's injury:

> 43. As a result of the conduct, actions, and inaction of Defendants, Plaintiff has suffered various types of damages as set forth herein including specifically, the loss of credit; the loss of the ability to purchase and benefit from a line of credit; the loss of time and other frustration and aggravation associated with writing dispute letters; time and money expended meeting with his attorneys; tracking the status of his disputes; monitoring his credit file; and the mental and emotional pain, anguish, humiliation, and embarrassment of credit denials.
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> 44. Given that Plaintiff’s other trade lines were corrected with Experian, and across the other credit reporting agencies, the inaccurate reporting of the Ocwen and RCS trade lines on the Experian report was the cause of Plaintiff’s denials of credit.

Compl. ¶¶ 43-44.

2. It is now clear, and indeed undisputed, that the allegation in paragraph 43 of Mr. Jackson's complaint that he had suffered credit denials was false. In answers to interrogatories served on June 3, 2016, Mr. Jackson identified two credit applications that he made on December 11 and December 13, 2015 (interestingly, just 1 day and 3 days, respectively, after he filed suit) as his only credit denials. Def.'s Mem ., Ex. A at 4 (answer to interrogatory 7). And during his deposition, Mr. Jackson admitted that as of the date he filed his complaint, he had not suffered any credit denials or any emotional distress, humiliation, or embarrassment related to credit denials and that those parts of his complaint were inaccurate. *Id.*, Ex. B at 116-17 (deposition).

3. Mr. Jackson still contends, and he testified during his deposition, contend that he suffered emotional distress—"irritability" was the term he used during his deposition—from addressing the inaccuracies in his credit report. Pl.'s Mem., Ex. A at

127-29 (deposition). This is also part of what he alleged in paragraph 43 of his complaint. Experian challenges the sufficiency of this contention to carry the day, but that is an issue for another day, not for its Rule 11 motion.

4. In short, paragraph 43, from Mr. Jackson's perspective, is partly true and partly false.

5. It is clear from the record that the false allegations in paragraph 43 regarding credit denials were made in violation of Federal Rule of Civil Procedure 11(b), because they could not possibly have been made "to the best of … the knowledge, information, and belief" of Mr. Jackson's attorneys Majdi Hijazin, who electronically signed the complaint, and the Sulaiman Law Group. The Court does not know exactly who at the law firm reviewed the complaint's allegations with Mr. Jackson (if anyone did), but that does not matter. If either Mr. Hijazin or anyone else at the law firm had inquired of Mr. Jackson before filing the complaint, they would have found out exactly what Mr. Jackson later made clear in his interrogatory answers and during his deposition; and they would have known that the allegation in paragraph 43 about credit denials was false.

6. For these reasons, the Court finds that Sulaiman Law Group violated Rule 11(b)(3) in alleging in paragraph 43 of the complaint that Mr. Jackson had, as of the date of filing, suffered credit denials due to Experian's alleged FCRA violation.

7. The real question here is what sanction, if any, is appropriate. Ironically, the brief that Experian's counsel originally filed in support of the motion erroneously stated that imposition of a sanction is mandatory upon finding a Rule 11 violation. *See* dkt. no. 69 at 7, 12 (filed Oct. 14, 2016). Counsel cited an obsolete version of Rule 11

and a case decided under that version, which is no longer good law. About a week later, Experian's counsel corrected this. See dkt. no. 73 (filed Oct. 20, 2016). The fact is, as Experian now concedes, that imposition of a sanction is not mandatory.

8. Within the 21-day safe harbor under Rule 11(c)(2), Mr. Jackson's attorneys offered to stipulate that the credit denials happened after the filing of the complaint. *See* Def.'s Mem. at 6. This was arguably a bit short of what Rule 11(c)(2) contemplates—withdrawal of the challenged allegation—but at the least, it was pretty close. Experian refused the stipulation because it "already has proof [of this] in the record," *id.*, and it insisted on dismissal of the complaint.

9. Dismissal would be too severe a sanction. Rule 11(c)(4) says that "[a] sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated." The Court is unable to say that the *entirety* of the allegation of injury in paragraph 43 was false. Rather, it was only the part about credit denials as of the date of filing. Sulaiman Law Group did not live up to its obligations under Rule 11, but dismissal would amount to throwing out the baby with the bath water, because it would *over*penalize the rule violation.

10. Experian contends that the claim in its entirety lacks merit, but that is not the issue on the present motion. In alleging a Rule 11 violation, Experian cites only the false allegation about credit denials contained in paragraph 43. Any sanction must be targeted to that violation. Even if the false allegation were removed from paragraph 43, there would be other allegations of actual injury in that paragraph, and the case almost certainly would have survived a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). If Experian wants the suit dismissed, it should attempt to persuade Mr.

Jackson and his counsel to withdraw it or, failing that, should move for summary judgment.

11. A sanction or sanctions other than dismissal may be appropriate and sufficient to deter repetition of the Rule 11 violation or comparable misconduct. Such sanctions might include a formal reprimand and/or monetary sanctions payable to Experian and/or to the district court. In the Court's view, however, it makes more sense to address the appropriate sanction upon the disposition of the lawsuit. For this reason, consideration and imposition of a sanction is deferred.

Conclusion

For the reasons stated above, the Court finds that Sulaiman Law Group violated Federal Rule of Civil Procedure 11(b)(3) in alleging in paragraph 43 of the complaint that Mr. Jackson had, as of the date of filing, suffered credit denials due to Experian's alleged FCRA violation. The Court defers consideration and imposition of a sanction until after disposition of the lawsuit. The status hearing and ruling set for November 16, 2016 is vacated. Defendant has until December 12, 2016 to file a dispositive motion; plaintiff has until January 9, 2017 to file a combined response and cross-motion, if any; defendant has until January 23, 2017 to file a combined reply on its dispositive motion and response on any cross-motion; and plaintiff has until February 6, 2017 to file a reply on its cross-motion if one has been filed. A status hearing is set for December 5, 2016 at 8:45 AM, in chambers (Room 2188).

Date: November 13, 2016

MATTHEW F. KENNELLY
United States District Judge